

**EXECUTIVE DOCUMENT SUMMARY**State Form **Received**

Instructions for completing the EDS and the Contract process.

- MAR 13 2008**
IDOA Contracts
1. Please read the guidelines on the back of this form.
 2. Please type all information.
 3. Check all that apply.
 4. For amendments / renewals, attach original contract.
 5. Attach additional pages if necessary.
- 518
6W

1. EDS Number: A262-6-250-1002	2. Date prepared: 3/12/2008
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3. CONTRACTS & LEASES

<input checked="" type="checkbox"/> Professional/Personal Services	<input type="checkbox"/> Contract for procured Services
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input checked="" type="checkbox"/> Amendment# <u>1</u>
<input type="checkbox"/> MOU	<input checked="" type="checkbox"/> Renewal # <u>1</u>
<input type="checkbox"/> QPA	<input type="checkbox"/> Other

FISCAL INFORMATION

4. Account Number: 1000-10250.523000	5. Account Name: PROFESSIONAL LICENSING
6. Total amount this action: \$0.00	7. New contract total: 0.00
8. Revenue generated this action: \$0.00	9. Revenue generated total contract: \$0.00
10. New total amount for each fiscal year:	
Year 2007	\$0.00
Year 2008	\$0.00
Year	\$
Year	\$

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 3/24/2008	12. To (month, day, year): 3/23/2010
13. Method of source selection:	
<input type="checkbox"/> Bid/Quotation	<input type="checkbox"/> Emergency
<input checked="" type="checkbox"/> RFP# 05-129	<input type="checkbox"/> Other (specify)
<input type="checkbox"/> Negotiated	<input type="checkbox"/> Special Procurement

35. Will the attached document involve data processing or telecommunications systems(s)?

Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):
IC 25-1-6-4; IC 25-1-8-5

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)

State is contracting with Promissor, Inc. for the preparation, administration, and maintenance of computer-based written licensing examinations, which shall include questions on Indiana license law, rules and regulations, for cosmetology instructors, estheticians, esthetician instructors, electrologists, electrology instructors, manicurists, shampoo operators, and master cosmetologists. Contractor will be paid directly from the candidate taking the licensing examination. State will monitor the fees and will receive the test results for release to the applicants.

38. Justification of vendor selection and determination of price reasonableness:

The agency is charged with the responsibility of providing for minimum qualification testing for the State Board of Cosmetology Examiners. The facility needed for the examinations required the rooms to be equipped with air ventilation and rooms for specialized skills testing, which involves use of hair chemicals and nail products.

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval <i>James Kelly</i>	41. Date Approved 03/13/08	42. Budget agency approval <i>EAM</i>	43. Date Approved 3/19/08
44. Attorney General's Office approval <i>[Signature]</i>	45. Date Approved 3/24/08	46. Agency representative receiving from AG	47. Date Approved



6702-002

AGENCY INFORMATION

14. Name of agency: Professional Licensing Agency	15. Requisition Number:
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16. Address: In. Professional Licensing Agency 402 W WASHINGTON ST RM W072 INDIANAPOLIS, IN 46204
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AGENCY CONTACT INFORMATION

17. Name: Medana C Davis	18. Telephone #: 234-2912
19. E-mail address: mdavis@pla.in.gov	

COURIER INFORMATION

20. Name: Roberta Gipson	21. Telephone #: 232-2960
22. E-mail address: rgipson@pla.in.gov	

VENDOR INFORMATION

23. Vendor ID # 0000014370	
24. Name: NCS PEARSON, INC	25. Telephone #: 610-617-5177
26. Address: 11000 PRAIRIE LAKES DR EDEN PRAIRIE, MN 55344	
27. E-mail address: Jennifer.Toomey@Pearson.com	
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
29. Primary Vendor: M/WBE Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	30. If yes, list the %: Minority: <input type="checkbox"/> % Women: <input type="checkbox"/> %
31. Sub Vendor: M/WBE Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	32. If yes, list the %: Minority: <input type="checkbox"/> % Women: <input type="checkbox"/> %
33. Is there Renewal Language in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	34. Is there a "Termination for Convenience" clause in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

RECEIVED**MAR 13 2008****OAG-ADVISORY**

PROFESSIONAL/PERSONAL SERVICES CONTRACT

AMENDMENT # 1/RENEWAL # 1

Pursuant to IC 5-22-17-4 and the terms of the contract, Indiana Professional Licensing Agency ("State") exercises its option to renew its contract with Pearson VUE, a business of NCS Pearson, Inc., formerly known as the Promissor, Inc., ("Contractor") under the same terms and conditions of the original contract dated March 23, 2006. The entire contract shall commence on March 24, 2008 and shall terminate on March 23, 2010.

No fees or other payments will be due from or payable by the State under this Agreement. Instead, Contractor shall be entitled to retain all test administration fees paid by or on behalf of individual candidates who register to take cosmetology professional written examinations in Indiana. The test administration fee shall be no more than fifty-nine dollars (\$59) per candidate for each cosmetology professional examination that the candidate registers to take. In addition to the test administration fee, the Contractor may charge a fee of ninety-five dollars (\$95) to those individuals who have taken the cosmetology professional written examinations and had it graded who want to review and challenge their examination results.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Renewal, other than that which appears upon the face hereof.

All other matters previously agreed to and set forth in the original Contract shall remain in full force and effect.

The remainder of this page is intentionally left blank.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this contract. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

Contractor: Pearson VUE

By: Arthur Valt
Printed Name: Arthur Valentine
Title: General Manager Regulatory Services
Date: March 10, 2008

State of Indiana - Indiana Professional Licensing Agency:

By: Frances L. Kelly
Printed Name: Frances L. Kelly
Title: Executive Director
Date: 03-13-08

Indiana Department of Administration

By: Carrie Henderson
Carrie Henderson, Commissioner
Date: 3/14/08

Office of Management and Budget

By: ^{EAM} Christopher A. Ruhl
Christopher A. Ruhl, Director
Date: 3/19/08

Office of the Attorney General

Stephen Carter
Attorney General
Date: 3/24/08

**EXECUTIVE DOCUMENT SUMMARY**

State Form 41221 (R6 / 9-02)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Check EDS against contract data for consistency.
6. Attach additional pages if necessary.

55

JT

1. EDS Number: A262-250-1002		2. Date prepared: March 17, 2006	
3. CONTRACTS & LEASES			
<input checked="" type="checkbox"/> Professional/Personal Services <input type="checkbox"/> Grant <input type="checkbox"/> Lease <input type="checkbox"/> Attorney <input type="checkbox"/> MOU <input type="checkbox"/> QPA <input type="checkbox"/> Equipment Lease		<input type="checkbox"/> Contract for Services <input type="checkbox"/> Maintenance <input type="checkbox"/> License Agreement <input type="checkbox"/> Amendment # _____ <input type="checkbox"/> Renewal # _____ <input type="checkbox"/> Other (specify) _____	
FISCAL INFORMATION			
4. Account Number: 1000/523000/102500		5. Account Name: Professional Licensing Agency	
6. Total amount this action: \$0		7. New contract total: \$0	
8. Revenue generated this action: \$0		9. Revenue generated total contract: \$0	
10. New total amount for each fiscal year: Year 06 \$0 Year 07 \$0 Year \$ Year \$			
TIME PERIOD COVERED IN THIS EDS			
11. From (month, day, year): January 1, 2006		12. To (month, day, year): December 31, 2007	
13. Method of source selection: <input type="checkbox"/> Negotiated <input type="checkbox"/> RFP # 05-129 <input type="checkbox"/> Bid/Quotation <input type="checkbox"/> Emergency <input type="checkbox"/> Special Procurement <input type="checkbox"/> Other (specify) _____			
34. Statutory Authority (Cite applicable Indiana or Federal Codes): IC 25-1-6-4; IC 25-1-8-5			
35. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.) State is contracting with Promissor, Inc. for the preparation, administration, and maintenance of computer-based written licensing examinations, which shall include questions on Indiana license law, rules and regulations, for cosmetologists, cosmetology instructors, estheticians, esthetician instructors, electrologists, electrology instructors, manicurists, shampoo operators, and master cosmetologists. Contractor will be paid directly from the candidate taking the licensing examination. State will monitor the fees and will receive the test results for release to the applicants.			
36. Justification of vendor selection and determination of price reasonableness: The agency is charged with the responsibility of providing for minimum qualification testing for the State Board of Cosmetology Examiners. The facility needed for the examinations requires the rooms to be equipped with air ventilation and rooms for specialized skills testing, which involves use of hair chemicals and nail products.			
37. If this contract is submitted late, please explain why: (Required if more than 30 days late.)			
SIGNATURES			
38. Agency fiscal officer or representative approval <i>James Kelly</i>		39. Date Approved 3/17/06	
42. Attorney General's Office approval <i>JBT</i>		43. Date Approved 3/23/06	
40. Budget agency approval <i>TFT</i>		41. Date Approved	
44. Agency representative receiving from AG		45. Date Approved	

AGENCY INFORMATION14. Name of agency:
Indiana Professional Licensing Agency15. Requisition Number:
People Soft #9242016. Address:
402 West Washington Street, Room W072
Indianapolis, Indiana 46204**AGENCY CONTACT INFORMATION**17. Name:
Medana C. Davis18. Telephone #:
234-2912

19. E-mail address: mdavis@pla.IN.gov

COURIER INFORMATION

20. Name: Roberta Gipson

21. Telephone #:
232-2960

22. E-mail address: rgipson@pla.IN.gov

VENDOR INFORMATION

23. Taxpayer Identification Number: 23-2212698

24. Name: Promissor, Inc.

25. Telephone #:
610-617-930026. Address:
Three Bala Plaza West, Suite 300
Bala Cynwyd, PA 19004

27. E-mail address: www.promissor.com

28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) ☒ Yes ☐ No29. Minority participation?
☐ Yes ☐ No
If no, and contract > \$25,000.00, you must include justification in box 3430. If yes, list percentage:
_____%31. Is there Renewal Language in the document?
☒ YES ☐ NO32. Is there a "Termination for Convenience" clause in the document?
☒ YES ☐ NO33. Will the attached document involve data processing or telecommunications systems(s)? ☐ Yes: ITOC or Delegate has signed off on contract
☐ Possibly: This issue has been discussed with ITOC or Delegate**Received****MAR 17 2006****IDOA Contracts**

PROFESSIONAL SERVICES CONTRACT

This Contract, entered into by and between the Indiana Professional Licensing Agency (the "State") and Promissor, Inc., an affiliate of NCS Pearson, Inc., Three Bala Plaza West, Suite 300, Bala Cynwyd, Pennsylvania, 19004, (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. General Provisions

1. Under IC 25-8, the State Board of Cosmetology Examiners (SBCE) is required to prepare and administer the licensing examinations to candidates applying for licensure as cosmetologists, cosmetology instructors, estheticians, esthetician instructors, electrologists, electrology instructors, manicurists, master cosmetologists and shampoo operators;
2. Contractor shall administer for the State of Indiana, in accordance with the specifications determined by the State, computer-based and written licensing examinations to candidates applying for licensure as cosmetologists, cosmetology instructors, estheticians, esthetician instructors, electrologists, electrology instructors, manicurists, master cosmetologists and shampoo operators; and
3. In providing the services specified hereunder, the Contractor will use a computer-based testing system. This system shall include on-site examination scoring and the issuance of photo bearing score reports to the examination candidates. The Contractor owns all proprietary rights to the electronic scoring and reporting system.

2. Duties of Contractor

The Contractor shall provide the following services under this Contract:

- (1) Develop, maintain, and administer unique forms of the standardized computer-based and written licensure examinations for cosmetologists, cosmetology instructors, estheticians, esthetician instructors, electrologists, electrology instructors, manicurists, master cosmetologists and shampoo operators. The licensing examinations shall be designed to contain all required questions for cosmetology professionals and to be completed within two (2) to three (3) hours. The examinations shall be designed in order that two (2) examination sessions can be held per day.
- (2) Develop, maintain, and administer the standardized computer-based and written licensing examination covering the applicable statutes and rules of the SBCE for cosmetologists, cosmetology instructors, estheticians, esthetician instructors, electrologists, electrology instructors, manicurists, master cosmetologists, and shampoo operators. The licensing examination shall be designed with the input and approval of the State and should include the following number of questions within the time limit stated:
 - (a) Cosmetologists - 20 question, 30 minutes
 - (b) Cosmetology Instructors - 100 questions, 60 minutes
 - (c) Estheticians - 30 questions, 30 minutes

- (d) Esthetician Instructors - 100 questions, 60 minutes
 - (e) Electrologists - 30 questions, 30 minutes
 - (f) Electrology Instructors - 80 questions, 60 minutes
 - (g) Manicurists - 20 questions, 30 minutes
 - (h) Shampoo Operators - 15 questions, 30 minutes
 - (i) Master Cosmetologist - 20 questions, 30 minutes
- (3) Ensure that all cosmetology professional examinations administered conform to the requirements of Indiana law, rules, and regulations.
 - (4) Administer the standardized computer-based and written licensing examination and the state law examination to an examination candidate on the same day.
 - (5) Provide the services through a computer-based testing system. This system shall include on-site examination scoring and the issuance of photo bearing score reports to the candidates.
 - (6) Design and produce candidate information handbooks for cosmetologists, cosmetology instructors, estheticians, esthetician instructors, electrologists, electrology instructors, manicurists, master cosmetologists, and shampoo operators that are customized to meet the needs of the State and distribute sufficient quantities to the State and other designated parties upon request.
 - (7) Obtain the State's approval for the initial candidate information handbook and any subsequent versions as well as any other candidate information material.
 - (8) Deliver examination services:
 - (a) Establish the examination schedule.
 - (b) Maintain and provide accurate information to examination candidates and the State.
 - (c) The SBCE will determine application eligibility. The Contractor is responsible for verification of examination candidate's eligibility to take the licensing examination.
 - (d) Offer the computer-based and written cosmetology professional licensing examinations in multiple languages, including but not limited to, Spanish, Vietnamese, French, German, and Russian.
 - (e) Offer the computer-based and written cosmetology professional licensing examinations in at least seven (7) testing centers with at least one (1) center in Indiana and one (1) center in Louisville, Kentucky, Columbus, Ohio, Lansing, Michigan, and Chicago, Illinois offering daily examinations. There must be at least three (3) testing centers in Indiana. The testing centers in Indiana, Louisville, Kentucky, Columbus, Ohio, Lansing, Michigan, and Chicago, Illinois must be available five (5) days per week for examinations for a minimum of two (2) examination sessions and have the capacity to accommodate on average 285 cosmetology professional examination candidates per month. However, if the demand for the cosmetology professional examinations in these testing centers is not great enough to cause the Contractor to use the site exclusively for cosmetology professional examinations, the Contractor may offer other types of examinations, not related to cosmetology, at these centers in addition to cosmetology professional examinations. All test center locations shall be approved by the State.
 - (f) Offer the state law examination to candidates for licensure as a cosmetology professional by reciprocity

- (g) Administer the licensing examinations electronically. However, individuals who are unable to take the electronically administered examination because of a disability may apply to take a paper and pencil examination, which shall be provided and administered by the Contractor.
 - (h) Provide a toll-free telephone and website reservation system, schedule examination appointments and provide confirmation numbers for all candidates through the Contractor's toll-free telephone and/or website reservation system.
 - (i) Collect examination fees from the candidates during registration and/or at testing. Fees must be accepted in the form of credit card, debit card, personal check by phone, or by pre-purchasing a voucher.
 - (j) Negotiate with the State all potential rate increases for the cosmetologist, cosmetology instructor, esthetician, esthetician instructor, electrologist, electrology instructor, manicurist, master cosmetologist, and shampoo operator licensing examination fees.
 - (k) Provide immediate candidate score reports following the examination administration at each testing center. Failing score reports will include diagnostics for each component of each examination administered and scheduling information for retaking the licensing and/or state law examinations.
 - (l) Take appropriate steps to ensure accessibility of examination to persons with disabilities and otherwise comply with all requirements of the Americans with Disabilities Act.
 - (m) Provide to the State a monthly paper and/or electronic roster of all candidates who took the examinations during the month, a summary of examination performance, and a summary of attendance.
 - (n) Prepare a monthly paper and/or electronic report that calculates the pass/fail statistics for each approved pre-license cosmetology school, distribute the report to individual schools, and provide a summary of the reports to the State.
 - (o) Provide for candidate review of the appropriate examination in accordance with guidelines mutually agreed upon by the State and Contractor.
 - (p) Address any questions concerning the examination content, grading, and scoring.
- (9) Provide adequate methods and procedures for safeguarding confidentiality and securing the information will be provided.
 - (10) The data shall remain the property of the State at all times and shall not, under any circumstances, be divulged to other parties without the express permission of the State. The Contractor's personnel shall only have access to the data for maintenance of the system, unless specifically authorized by the State.
 - (11) Ensure that input personnel and those persons with access to the information have adequate security clearances. The State reserves the right to initiate background checks on these individuals.
 - (12) The system's security shall be protected with unique user identifications and passwords at the system, file, and function level. The State shall provide a list of personnel who are authorized to access the data; the system shall incorporate this list and update it as required.

3. Duties of the State

The State shall:

- (1) Require each candidate to comply with the examination instructions as they are stated in the Candidate Handbook, to register for the examination through the Contractor's toll free and/or website reservation system at least one (1) business day in advance of the desired examination date, and to call no later than four (4) business days before the examination to make scheduling changes or cancellations at no fee.
- (2) Require each candidate to submit required fee during registration.
- (3) Process examination applications for cosmetology professional licensure and provide a letter of approval to take the appropriate licensing examination to each candidate eligible for Indiana examinations.
- (4) Provide Contractor with current laws, rules, and regulations for the State of Indiana SBCE and submit all pertinent updates and changes to said laws, rules, and regulations promptly.
- (5) Establish a state passing score for the examinations. State shall have sole responsibility for establishing minimum qualifications and passing requirements of all examination candidates, and the Contractor shall have no liability for general, special, or consequential damages resulting from or claiming to have resulted from establishing such qualifications and requirements or from other action by the State.
- (6) Assist in the investigation of any security breach in the connection with the development, maintenance, or administration of the computer-based and written cosmetology professional licensing examinations.
- (7) Provide Contractor annually with a list of approved cosmetology schools and supply interim additions and deletions promptly.
- (8) Provide names of Indiana participants who are eligible and interested in assisting in examination item writing and assembly activities.
- (9) Meet with the Contractor as necessary for the purpose of developing cosmetology professional content specifications and reviewing examination questions.
- (10) After termination, or notice of intent of non-renewal, of this Contract the State will return any examination questions provided by the Contractor for client review and agree not to use any examination questions provided or used by the Contractor during the operation of this Contract.

4. Consideration

No fees or other payments will be due from or payable by the State under this Contract. Instead, Contractor shall be entitled to retain all examination administration fees paid by or on behalf of individual candidates who register to take cosmetology professional computer-based or written examinations in Indiana. The examination administration fee shall be no more than fifty-nine dollars (\$59) per candidate for each cosmetology professional examination that the candidate registers to take. In addition to the examination administration fee, the Contractor may charge a fee of ninety-five dollars (\$95) to those individuals who have taken the cosmetology professional computer based or written examinations and had it graded who want to review and challenge their examination results.

5. **Term**

This Contract shall be effective for a period of two (2) years. It shall commence on March 21, 2006 or the date of the final State acceptance and shall remain in effect through March 21, 2008.

6. **Assignment; Successors**

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

7. **Audits**

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

8. **Authority to Bind Contractor**

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and this Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

9. **Changes in Work**

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

10. **Compliance with Laws**

A. The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of the Contract require formal modification.

B. The contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6

et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the contractor. In addition, the contractor may be subject to penalties under Indiana Code § 4-2-6-12.

C. The Contractor certifies by entering into this Contract, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach of the Contract and grounds for immediate termination of the Contract and denial of further work with the State.

H. The Contractor hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

I. Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that State may bar Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to the State and has submitted proof of such payment to the State.

J. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

12. Condition of Payment

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state, or local law.

13. Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to Contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

Notwithstanding the foregoing provisions of this Section 13, the parties agree that the Contractor shall be the exclusive owner of all examination items provided from its general item bank, regardless of when those items are created, and such items shall be licensed for State use during the term of this Contract only. Indiana-specific items created by the Contractor shall become the property of the State, provided that the Contractor shall retain ownership of the underlying root items in its general item bank from which some Indiana-specific items may be created."

14. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition

The Contractor further agrees that all information, data, findings, recommendations, proposals, etc., whatever form therein, secured, developed, written or produced relating to the Indiana State Law portion of the exam by the Contractor in furtherance of this Contract shall be property of the State and that the Contractor shall take such action as is necessary under law to preserve such property rights in and of the State while such property is within the control and/or custody of the Contractor. By this Contract the Contractor specifically waives and/or releases to the State any cognizable property right of the Contractor to copyright, license, patent, or otherwise use such information, data, findings, recommendations, proposals, etc.

15. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

16. Conflict of Interest

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- B. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.
- D. Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of

Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

17. Debarment and Suspension

A. The Contractor certifies, by entering into this Contract, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this Contract and shall be solely responsible for any paybacks and or penalties that might arise from non-compliance. Contractor shall immediately notify the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate work done by the sub-contractor pursuant to this Contract.

18. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

19. Disputes

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner,

within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

20. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the Contractor's workplace.

False certification or violation of this certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the Contract or agreement as part of the Contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a

drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

21. Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

22. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

23. Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this

Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

24. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

25. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any. The State shall not provide such indemnification to the Contractor.

26. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

27. Information Technology Accessibility

All Contractors supplying information technology related products and services to the State must comply with all Indiana Technology Oversight Commission policies and standards. These policies and standards can be found at http://www.in.gov/itoc/html_site/architecture/poli.html and http://www.in.gov/itoc/html_site/architecture/stan.html. Any deviation from the published standards and policies must be approved by ITOC and be supported by a written waiver.

The Contractor acknowledges and agrees that all hardware, software and services provided to or purchased by the State must be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d), as amended, and adopted by the State of Indiana Information Technology Oversight Commission pursuant to IC 4-23-16-12.

28. Licensing Standards

The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, the Contractor shall notify State immediately and the State, at its option, may immediately terminate this Contract.

29. Merger & Modification

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.

30. Minority and Women Business Enterprise Compliance

The Contractor agrees to comply fully with the provisions of the Contractor's MBE/WBE participation plan.

31. Discrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or candidate for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

32. Notice to Parties

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 232-2980

B. Notices to the Contractor shall be sent to:

Arthur Valentine
Vice President
Promissor, Inc.
Three Bala Plaza West, Suite 300
Bala Cynwyd, Pennsylvania 19004
(610) 617-9300

with copy to: Contract Department
Pearson VUE
5601 Green Valley Drive
Bloomington, MN 55437
(952) 681-3000

C. Payments to the Contractor shall be sent to the address designated by Form W-9 on file with the auditor of state which is:

Promissor, Inc.
Attention: Promissor Processing Center
PO Box 8588
Philadelphia, PA 19101-8588

33. Order of Precedence

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) RFP#05-29, (4) Contractor's response to RFP#05-29, and (5) attachments prepared by the Contractor.

34. Payments

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

35. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

36. Renewal Option

This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed Contract may not be longer than the term of the original Contract.

37. Security and Privacy of Health Information

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor assures that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State including, as required by the final regulations.

38. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

39. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

40. Taxes

The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

41. Termination for Convenience

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original Contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

42. Termination for Default

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part, if the Contractor fails to:

1. Correct or cure any breach of this Contract;
 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the Contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

43. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

44. Work Standards

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and Contractor shall grant such request.

45. Background Check Policy

The Contractor shall comply with any agency policy regarding background check procedures regarding the personnel employed or used by the Contractor to ensure the safety and security of the agency or institution. Upon full execution of this Contract, Contractor shall provide all verification that the required checks were successfully completed in accordance with the agency background check policy. Failure to provide such verification shall constitute material breach of this Contract.

46. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate Contract clauses (as defined in the 2004 IDOA Professional Services Contract Manual) in any way except for the following clauses which are identified by name below:

Continuity of Services

Insurance

Key Person(s)

Progress Reports

Travel

Notices

Duties of Contractor - Subsection 13

Limitation of Remedies and Limitation of Liability

47. Limitation of Remedies and Limitation of Liability

47.1 Neither party will be liable to the other for indirect, special, incidental, or consequential damages, even if the other party has knowledge of the possibility of the potential loss or damage.

47.2 Regardless of the form of action, Contractor's aggregate liability in any calendar year during the term of this Contract for the State's damages, claims, costs, settlement amounts, and/or awards will not exceed the greater of (i) an amount equal to the examination administration fees paid by candidates to Contractor during the preceding calendar year, or (ii) One Hundred Thousand Dollars (\$100,000.00). For the purposes of applying this Limitation of Liability, each instance of liability is applied to the calendar year in which the earliest date of the circumstance giving rise to the liability occurs.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

The rest of this page is left blank intentionally.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

By: Arthur Valentine

Printed Name: Arthur Valentine

Title: Vice President

Date: 3/16/06

State of Indiana Agency:

By: Frances L. Kelly

Printed Name: Frances L. Kelly

Title: Executive Director

Date: 3/17/06

Department of Administration

Earl A. Goode

Earl A. Goode

Commissioner

Date: 3/17/06

State Budget Agency

Charles E. Schaffel

Charles E. Schaffel

Director

Date: 3/21/06

APPROVED as to Form and Legality:

Office of the Attorney General

Stephen Carter

Stephen Carter

Attorney General

Date: 3/23/06